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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,688	11/08/2001	Lon Kensek		7064

7590

12/05/2003

Patrick J. Walsh, Esq.
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Stamford, CO 06901

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 9/08/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) 1-4, 6, 7 is/are withdrawn from consideration.

☒ Claim(s) 8, 9 is/are allowed.

☒ Claim(s) 5 is/are rejected.

☐ Claim(s) is/are objected to.

☐ Claims are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number)

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received:

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s).

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 6, 7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

Claims 5 and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support, examiner can find, for a particular % of diluent other than 93.4, of water.

Claims ~~5, 8~~ ^{5, 8} are rejected under 35 U.S.C. 103(a) as being unpatentable over Laversanne et al – 5788975 in view of.

Laversanne provides animal repellents (col. 3, lines 16-19) of methyl nonyl ketone (col. 4, lines 59-61) at 0.1-150 g/L (col. 5, top), with solubilizers (col. 5, lines 18-20) diluent of water (lines 21, 22), spreading agent; surfactants (col. 4, paragraph 3), polysorbate polymer (example 4). Example 1 shows .5% repellent; example 4 shows 2%, example 1 has 91.5% water multiple surfactants the instant spreading agent and solubilizer – maybe used (col. 4, top). Example 11 shows polymer solubizier, spreader active perfume, and diluent. The examples provide sufficient bases for one of ordinary skill in the art to provide the ratio of components desired to optimize desired parameters; such as enhanced repellent odor, enhanced stability, enhanced

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spreadability, size of micro capsules. NO protective bittering agent was used. Bitrex, however, is shown as (p.1) added to insect/animal deterrent (p.2) compositions to prevent child accidental ingestion.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pesticidal compositions to use one of Laversanne, modified with Bitrix to provide acceptable safety.

Bitrex teaches (p, line) one having ordinary skill in the art would have been motivated to use this compound to avoid accidental ingestion.

There are no non-obvious and/or unexpected results obtained since the prior art is well versed in the art of applying aversive additives to protect against accidental ingestion, and the active compound is a well known repellent.

The selection of each ingredient and concentration thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are know to be used is not basis for patentability.

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The instant invention provides well known old art recognized compounds, with well-known art recognized effects, applied by well known art recognized methods to achieve control over pests as is well in the art.

Applicant's arguments filed on 9/21/03 have been fully considered but they are not persuasive. Applicant's arguments have been considered, but only claims 8 and 9 are seen as outside of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR
November 19, 2003



NEIL S. LEVY
PRIMARY EXAMINER